

REMARKS

Applicants respectfully request the reconsideration and re-examination of the above-identified application.

Applicants gratefully acknowledge the withdrawal of the finality of the rejection and the rejection of the claims under 35 USC §112, second paragraph.

The Official Action stated the allowability of claims 18-37 was withdrawn.

Claims 21-22 and 24-25 were objected to as being dependent upon a rejected claim, but would be allowable if rewritten in independent form.

Claims 18-20, 23, and 26-37 were rejected under 35 USC §103(a) as allegedly being unpatentable over WO 99/07463 as evidenced by US 6,627,603 in view of WO 97/38787 as evidenced by US 6,938,581. Applicants respectfully traverse the rejection.

WO '463 and US '603 disclose releasing an active principle from multiple emulsions. WO '463 and US '603 provide a polydispersion consisting of 1-50% by weight of an inverted emulsion containing an active in the aqueous phase, and the inverted emulsion is dispersed within a continuous aqueous phase. The objective is to destabilize the polydispersion so that the active is released. While it may appear that WO '463 and US '603 teach similar components (i.e. alkylene oxide copolymers, polyglycerol polyricinoleate, and hydrocolloids), the references

fail to disclose or suggest 50-95% of the continuous aqueous phase is an inverted emulsion, there is osmotic balance between the two aqueous phases, and the continuous aqueous phase has 1-10% of a polysaccharide thickening agent, as recited in the claimed invention.

Furthermore, in the claimed invention, a thickening agent is added to the continuous aqueous phase to maintain stability of the double emulsion and prevent coalescence. WO '463 and US '603, on the other hand, teach adding hydrocolloids to trigger the coalescence of the emulsion and release the active principle (i.e. upset the osmotic balance between the aqueous phase of the inverted emulsion and the continuous aqueous phase). As a result, the references, after the addition of hydrocolloids, are not even directed to the same emulsion as recited in the claimed invention.

US '581 is offered for its alleged teaching of affecting viscoelastic properties of polydispersed emulsions that are used to form monodispersed emulsions. US '581 discloses the starting polydispersion includes preferably at least 65% of an emulsion dispersed within a continuous phase. The viscosity is controlled by adding thickeners, such as dextran. In one example, the thickeners make up 20% of the entire composition. However, US '581 fails to remedy the shortcomings of WO '463 and US '603 for reference purposes, since it fails to disclose or suggest

utilizing a thickener at 1%-10% of the composition and that the composition is a stable polydispersion.

Applicants submit that there is no motivation to combine the references cited. WO '463 and US '603 disclose polydispersions with the dispersed phase being 1-50% of the total composition, and the dispersed phase being an emulsion containing an active ingredient. One adds thickeners to destabilize the polydispersion and release the active. US '581, on the other hand, teaches a polydispersion composition with at least 65% of the composition being the dispersed phase. US '581 teaches thickeners may be added if the viscosity is not sufficient to maintain a stable polydispersion. Thus, the intended purpose of adding thickeners and the resulting emulsions are different. Applicants point out that "[i]f the proposed modification would render the prior art intention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification." *In re Gordon*, 733 F.2d 900, 221 USPQ 1125. There would be no motivation to look to US '581 for suggesting any amount of thickeners, since US '581 is adding thickeners for stabilizing the emulsion, which would render the emulsion of WO '463 and US '603 unsatisfactory.

Furthermore, "[i]f the proposed modification in combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the

claims prima facie obvious." *In re Ratti*, 270 F.2d 810, 123 USPQ 349.

Thus, even if one were to combine the references as suggested in the Official Action, the combination does not teach the claimed invention. Specifically, the combination teaches 1-50% of an emulsion dispersed within a continuous aqueous phase. The continuous phase is without polysaccharide thickening agents, since US '581 teaches emulsions having less than 65% of a dispersed phase are unstable, which is the desired state of the polydispersion of the primary references WO '463 and US '603.

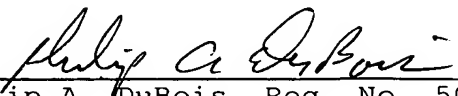
In view of the above, applicants respectfully request that the rejection be withdrawn. Applicants believe that the present application is in condition for allowance at the time of the next Official Action. Allowance and passage to issue on that basis is respectfully requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any

overpayment to Deposit Account No. 25-0120 for any additional
fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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